

1 THE HONORABLE ROBERT S. LASNIK
2 THE HONORABLE MICHELLE L. PETERSON
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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE
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15 VICKY CORNELL, individually, and in
16 her capacity, and as the Personal
17 Representative of the Estate of
Christopher John Cornell a/k/a Chris
Cornell,

18 Plaintiffs,

19 v.

20 SOUNDGARDEN, a purported
Washington General Partnership, KIM A.
21 THAYIL, MATT D. CAMERON,
HUNTER BENEDICT SHEPHERD, RIT
VENERUS and CAL FINANCIAL
GROUP, Inc.,

22 Defendants.

23
24 SOUNDGARDEN, a Washington General
Partnership, and SOUNDGARDEN
RECORDINGS LLC, a Delaware limited
liability company,

25 Counter-Plaintiffs,

26 v.

27 Vicky Cornell, individually, and in her
capacity as the Personal Representative of
the Estate of Christopher John Cornell
a/k/a Chris Cornell,

28 Counter-Defendants..

Case No. 2:20-cv-01218-RSL-MLP

**THE SOUNDGARDEN PARTIES'
MOTION FOR PRELIMINARY
INJUNCTION PURSUANT TO F.R.C.P. 65**

ORAL ARGUMENT REQUESTED

**NOTED ON MOTION CALENDAR:
April 16, 2021**

1 Pursuant to Federal Rules of Civil Procedure (“FRCP”) Rule 65, Defendant and Counter-
2 Plaintiff Soundgarden, a Washington General Partnership (“Soundgarden”), Defendants Kim A.
3 Thayil, Matt D. Cameron and Hunter Benedict Shepherd (the “Individual Band Defendants”), and
4 Counter-Plaintiff Soundgarden Recordings LLC (collectively the “Soundgarden Parties”) bring
5 this motion for preliminary injunction (“Motion”) against plaintiffs Vicky Cornell, individually
6 and in her capacity as the Personal Representative of the Estate of Christopher John Cornell
7 (“Plaintiffs”).

8 **I. STATEMENT OF SPECIFIC RELIEF SOUGHT**

9 The Soundgarden Parties seek entry of a preliminary injunction requiring that Plaintiffs,
10 during the pendency of this action and until adjudication of the relevant claims, (1) cease any
11 administration, control, or management of the Soundgarden Parties’ social media accounts,
12 including, but not limited to, their Facebook, Twitter, Instagram, Vimeo, YouTube, Snapchat,
13 Tumblr, Top Spin, and Pinterest accounts, and also the Soundgarden Parties’ official website at
14 <https://www.soundgardenworld.com/>, including the customer account with GoDaddy, which
15 registered the URL for and provides access to the official website (collectively, “Soundgarden
16 Social Media Accounts”), **and either** (2) preferably, return to the Soundgarden Parties control of
17 and password-access to the Soundgarden Social Media Accounts, **or in the alternative** (3) freeze
18 the Soundgarden Social Media Accounts with a prominent final posting in a visible location (e.g.,
19 most recent post, landing/home page, and/or “bio” section of the account) that states the
20 following: “Soundgarden has temporarily suspended its official social media accounts due to
21 pending litigation. In the interim, to follow Soundgarden, visit [link to preferred account(s)]. To
22 follow Chris Cornell, visit [link to preferred account(s)].” A proposed order is being submitted
23 concurrently for this Court’s convenience.

24 **II. INTRODUCTION**

25 Over the past decade, the use of social media has become ubiquitous. To remain culturally
26 relevant and financially competitive, businesses, entrepreneurs, and artists need to maintain active,
27 current, and thoughtfully-curated social media accounts. Social media accounts provide an
28 unparalleled medium for advertising, brand development, communication with fans, and even

1 direct sales. Consequently, businesses (including artists) pour significant funds and resources into
 2 the administration of social media accounts, often by hiring skilled professionals to develop and
 3 maintain those accounts. For artists especially, social media accounts have also effectively
 4 replaced “fan clubs” and provide important and financially-valuable data about their
 5 followers/fans. In sum, social media accounts have become invaluable capital, just like any other
 6 asset held by a business.

7 For more than a year, starting just before this action was filed on December 9, 2019, the
 8 Soundgarden Parties have been deprived of their ability to access, utilize, and control the official
 9 Soundgarden Social Media Accounts and their data. This is because, without any ownership right
 10 in the accounts, and having never been hired or given permission by Soundgarden to participate in
 11 their management, Plaintiffs are holding hostage the login information for the Soundgarden Social
 12 Media Accounts. Representatives of the Soundgarden Parties—the sole owners of the
 13 Soundgarden Social Media Accounts—have repeatedly requested that Plaintiffs return the login
 14 information, but Plaintiffs have refused. Plaintiffs are thus liable for conversion of the
 15 Soundgarden Parties’ personal property.

16 Prior to the filing of this action, the Soundgarden Parties appointed their then-management
 17 company, Patriot Management (“Patriot”) with the authoritative control over the Soundgarden
 18 Social Media Accounts. After Patriot was terminated in October 2019, the Soundgarden Parties
 19 learned that Patriot had wrongfully given, or otherwise allowed disclosure of, the login
 20 information for the Soundgarden Social Media Accounts to Plaintiffs (specifically to Vicky
 21 Cornell), to whom Patriot still provides management services on behalf of Mr. Cornell’s Estate
 22 (“Estate”). In an email dated December 3, 2019, later produced by Patriot in this action, Patriot
 23 personnel confirmed the situation: ***“Vicky [Cornell] has since changed all the social media
 24 passwords for the band accounts and will not share them with [Patriot] as she wants the band,
 25 and I quote, ‘to sue her for them’.”***

26 While unaware of this email or its import at the time, the Soundgarden Parties eventually
 27 did “counter-sue” Plaintiffs in this action for conversion of the Soundgarden Social Media
 28 Accounts, among other related counterclaims. On these bases, there now exists a legal dispute

1 between the Soundgarden Parties and Plaintiffs as to who has the right to control the Soundgarden
 2 Social Media Accounts. But the Soundgarden Parties cannot wait until that dispute is adjudicated
 3 to regain control of the Soundgarden Social Media Accounts and their social media presence—or
 4 at least remove Plaintiffs' control—as their lack of control, and Plaintiffs' neglect and affirmative
 5 mismanagement, in the interim have already undermined the reputation, fan relationships, and
 6 cultural and business legacy of Soundgarden. The current untenable situation threatens irreversible
 7 damage to Soundgarden's long-term business success and to its good will and online presence
 8 established with an investment of time and money for over a decade. For these reasons, the
 9 Soundgarden Parties seek a preliminary injunction to maintain the status quo just prior to the
 10 commencement of this action, at which point Plaintiffs were not exercising control over the
 11 Soundgarden Social Media Accounts. The specific nature of the preliminary injunction sought in
 12 this Motion, including the potential alternatives, is set forth *supra* in Section I.

13 For the reasons detailed below, a preliminary injunction is warranted because the
 14 Soundgarden Parties (1) are likely to succeed on the merits of their claim that Plaintiffs have
 15 converted the Soundgarden Social Media Accounts by willfully taking control of these accounts
 16 without any permission or ownership right, (2) are likely to suffer irreparable harm to their
 17 reputation, fan base, and business viability if Plaintiffs are permitted to continue sabotaging the
 18 Soundgarden Social Media Accounts, (3) the issuance of a preliminary injunction will cause
 19 Plaintiffs no harm and the balance of hardships thus greatly favors the Soundgarden Parties, and
 20 (4) the requested injunctive relief is in the public interest especially to Soundgarden's fans.

21 **III. FACTUAL BACKGROUND**

22 Soundgarden, the band ("Band"), was formed in the early 1980s and evolved into a world-
 23 famous, Grammy-award-winning rock band that became a seminal influence on "grunge" rock
 24 music and the associated cultural movement originating in Seattle. The ultimate members of the
 25 Band, and partners in Soundgarden, were Mr. Cornell and the Individual Band Defendants. Mr.
 26 Cornell, the Band's lead-singer, tragically died on May 18, 2017. Plaintiff Vicky Cornell is the
 27 widow of Mr. Cornell and the personal representative of his Estate.

28

1 For many years, the Band's social media accounts were administered by different
 2 individuals who would work at the direction of the Band with the Band's personal management,
 3 most recently Patriot, acting as the intermediary for approvals and instructions. *See Declaration of*
 4 Kim Thayil ("Thayil Decl.") ¶ 5. Since 2010, the Soundgarden Social Media Accounts include,
 5 but are not limited to, Facebook, Twitter, Instagram, Vimeo, YouTube, Snapchat, Tumblr, Top
 6 Spin, and Pinterest, and also the Band's official website at <https://www.soundgardenworld.com/>,
 7 including the customer account with GoDaddy, which registered the URL for and provides access
 8 to the Band's official website. *See* Thayil Decl. ¶ 2. Patriot's services to Soundgarden were
 9 terminated in October 2019. *See Declaration of Ray Garcia ("Garcia Decl.")* ¶ 3. In early
 10 December 2019, Soundgarden's counsel corresponded with Patriot requesting the delivery of the
 11 log-in information and other access rights for the Soundgarden Social Media Accounts. Patriot
 12 responded that the information would be gathered and delivered. *See* Garcia Decl. ¶ 4, Ex. A.
 13 However, none of the log-in information or other access rights were sent and a subsequent request
 14 to Patriot by Soundgarden's counsel was ignored. *See* Garcia Decl. ¶ 4. It is now clear that,
 15 without authority or permission, Patriot provided, or otherwise allowed disclosure of, the log-in
 16 information to Plaintiffs. This belief is confirmed, among other evidence, by an email dated
 17 December 3, 2019, produced by Patriot in this action, wherein Patriot personnel stated as follows:
 18 "Vicky [Cornell] has since changed all the social media passwords for the band accounts and will
 19 not share them with [Patriot] as she wants the band, and I quote, 'to sue her for them'." *See* Garcia
 20 Decl. Ex. A. At no point were the Surviving Band Members informed or aware that Vicky Cornell
 21 had any role regarding the Soundgarden Social Media Accounts or access to passwords. *See*
 22 Thayil Decl. ¶ 8. Indeed, the first time they learned that Vicky Cornell claimed some role was in
 23 an email from Plaintiffs' counsel dated March 20, 2020, which stated inaccurately that "Vicky has
 24 been running the social media sites for years." *See* Garcia Decl. ¶ 5, Ex. B.

25 Despite repeated requests, Plaintiffs have refused to deliver the log-in information and
 26 other access rights to the Soundgarden Social Media Accounts or to otherwise relinquish their
 27 control. *See* Garcia Decl. ¶ 6, Exs. 3-4. With regard to Soundgarden's official website, Plaintiffs'
 28 position belies their own allegation in their original Complaint in this action (removed in

1 subsequent complaints) that Soundgarden “is also the owner, operator and/or licensor of the
 2 Band’s website, which offers official Soundgarden merchandise for sale to citizens of the State of
 3 Florida. (See <http://www.soundgardenworld.com/>).” *See* Complaint (Dkt. No. 1) ¶10. Critically,
 4 Soundgarden has continued to pay for the maintenance and administration of the official website
 5 including paying The Creative Corporation, which built out the website, annual fees since 2015.
 6 *See* Thayil Decl. ¶ 3.

7 Given Plaintiffs’ refusals, Soundgarden has included in its Counterclaims in this action
 8 three causes of action relating to the Soundgarden Social Media Accounts: (1) a count for
 9 “conversion” of the Soundgarden Social Media Accounts; (2) a count for “unjust enrichment” for
 10 Plaintiffs’ custody and use of the Soundgarden Social Media Accounts; and (3) a count for “False
 11 Designation of Origin and False Endorsement” pursuant the Lanham Act for Plaintiffs’ activities
 12 relating to the Soundgarden Social Media Accounts. *See* First Amended Counterclaims (Dkt. No.
 13 90-1) ¶¶ 114-117, 118-121, 134-139. In responses to Soundgarden’s Interrogatories in this action,
 14 Plaintiffs have further and formally confirmed their refusal to return control to Soundgarden of the
 15 Soundgarden Social Media Accounts, even though Vicky Cornell is not a partner in the
 16 Partnership or a member of the Band. *See* Garcia Decl. Ex. C at 21-22 (Plaintiffs’ Response to
 17 Special Interrogatory No. 16).

18 While Vicky Cornell improperly refuses to return control of the Soundgarden Social Media
 19 Accounts to Soundgarden, she has continued to control and manage these accounts to the
 20 detriment of Soundgarden. *See* Garcia Decl. ¶ 7. For example, without Band permission, Vicky
 21 Cornell, wrongly identifying herself as “Soundgarden,” has removed fan comments and has
 22 herself posted images and comments to publicly-accessible Soundgarden Social Media pages. *See*
 23 Garcia Decl. Exs. J, L. Some of those postings by Vicky Cornell are clearly intended to denigrate
 24 the Band and the Surviving Band Members. *See* Garcia Decl. ¶ 8, Ex. N.

25 At least some members of the public are aware that Vicky Cornell is posing as
 26 “Soundgarden” and is posting the content. For example, in late-March of 2020, Vicky Cornell
 27 posted as “Soundgarden” on Soundgarden’s official Instagram page at
 28 Instagram.com/p/BbBXofJIRO/ a photo of Cameron, Soundgarden’s drummer, with the

capitalized words “FEEL THE RHYTHM WITH YOUR HANDS STEAL THE RHYTHM WHILE YOU CAN” printed over the photo. *See* Garcia Decl. ¶ 9, Ex. N. These words are lyrics taken from the 1994 Soundgarden hit recording entitled, “Spoonman.” *See* Garcia Decl. ¶ 9. This posting was meant to be understood by Soundgarden fans as a comment from Vicky Cornell (masquerading as “Soundgarden” on the official Soundgarden Instagram page) about the rhythm player “stealing” from Vicky Cornell. *See* Garcia Decl. ¶ 10. Many fans got the message and they did not like it. *See id.* Examples of fan comments on the post, which have since been deleted by Vicky Cornell, include the following:

- “All time SoundgardenFan unfollowing this & CC IG account & not buying or streaming anything from the band or Chris Cornell anymore (I have my CDs & concert memories from the past & that’s it)! As honestly truly sorry I am for the remaining band members...but I hate this focus on C.Cornells family and this money/rights/power crusade ... those band mocking posts... the hurting comments of people... with the only effect of bruising & harming the image & the art of a real amazing BAND! Thx 2 Soundgarden for their amazing music!! RIP Chris Cornell! Kim, Ben, Matt: Keep your head up guys & stay creative!”
- “if only Matt had access to this account. Chris’s widow controls it...”
- “yes its basically Vicky k mocking SG and their lawsuit”

See id.

Otherwise, the Soundgarden Social Media Accounts have largely been in a state of neglect. There has been no news item added to the Band’s official website since October 15, 2019 (*see Garcia Decl. Ex. E*), no new post on the Band’s Twitter account since January 28, 2020 (*see Garcia Decl. Ex. F*), one new post on the Soundgarden Facebook account to promote the Chris Cornell solo album which was recently posthumously released on March 3, 2021, but none prior to that post since February 23, 2020 (*see Garcia Decl. Ex. G*), and the Band’s Tumblr account has no content on it (*see Garcia Decl., Ex. M*). The Band’s Facebook “Official Store” page is not operational. *See Garcia Decl. Ex. H.* The “About” page on the Band’s YouTube channel contains the following: “Description: The ‘Chris Cornell’ Career Retrospective, featuring ‘When Bad Does Good,’ is available now at www.chriscornell.com.” *See Garcia Decl. Ex. I.* Further, apparently due to Plaintiffs’ lack of posting or other mismanagement, the Soundgarden Twitter account has been

1 stripped of its “verified blue badge” thereby casting doubt as to whether or not the account is
 2 actually Soundgarden’s.¹ *See Garcia Decl.* ¶ 17, Ex. F.

3 As noted, Soundgarden is informed and believes that fans of Soundgarden have become
 4 aware that Vicky Cornell, and not the Soundgarden Parties, is controlling the Soundgarden Social
 5 Media Accounts. This circumstance has caused direct injury to Soundgarden including
 6 reputational harm and loss of income including on the basis that fans have been dissuaded from
 7 purchasing merchandise on the Soundgarden official website due to doubts about the recipient of
 8 associated revenue. *See Garcia Decl.* ¶ 11.

9 IV. ARGUMENT

10 A. Standard Of Review.

11 1. Purpose of Preliminary Injunction/Status Quo

12 The purpose of a preliminary injunction is to preserve the *status quo* until the Court can
 13 issue a final ruling on the underlying action’s merits. *Chalk v. U.S. Dist. Court*, 840 F.2d 701, 704
 14 (9th Cir.1988). The “status quo” is defined as “the last, uncontested status which preceded the
 15 pending controversy.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873,
 16 879 (9th Cir. 2009) (internal citations omitted).

17 Here, the Soundgarden Parties seek injunctive relief to preserve the status quo just
 18 preceding the December 9, 2019, commencement of this action, and at which time the
 19 Soundgarden Parties, by and through their then-management company, Patriot, controlled access
 20 to and the content of the Soundgarden Social Media Accounts for the benefit of the Soundgarden
 21 Parties. This status changed in early December 2019, when following the Soundgarden Parties’
 22 written request to Patriot that they deliver to the Soundgarden Parties the log-in information and
 23 other access rights for the Soundgarden Social Media Accounts, Patriot failed to do so. *See Garcia*
 24 *Decl.* ¶ 4. The Soundgarden Parties now know that Patriot was unable to return the requested log-
 25 in information and other access rights to the Soundgarden Parties because, after Patriot or agents
 26

27 ¹ One of the most important factors governing a social media account’s success is credibility. Public figures and
 28 brands of all types strive to achieve the “verified blue badge” that Facebook and Twitter apply to accounts that serve
 as a seal of approval that the accounts actually belong to the person or entity that purport to maintain them.

1 acting at the direction of Patriot gave her access without the Soundgarden Parties' permission or
 2 authority, Vicky Cornell changed the passwords and would not share them with Patriot. *See*
 3 Garcia Decl. Ex. A. Since then, Plaintiffs (and Patriot) have ignored the Soundgarden Parties'
 4 multiple requests to deliver the log-in information so that the Soundgarden Parties may regain
 5 administrative control of the Soundgarden Social Media Accounts. *See* Garcia Decl. ¶ 6.
 6 Meanwhile, Vicky Cornell is administering the Soundgarden Social Media Accounts (without
 7 permission) and she claims the legal right to do so. Defendants contest this claim in their operative
 8 Counterclaims and are awaiting the Court's adjudication of the issue. In the meantime, a
 9 preliminary injunction is warranted to maintain the pre-litigation, pre-controversy, status quo.

10 **2. Legal Standard For Issuance Of A Preliminary Injunction.**

11 “A party seeking a preliminary injunction must establish that (1) it is likely to succeed on
 12 the merits, (2) it is likely to suffer irreparable harm in the absence of preliminary relief, (3) the
 13 balance of equities tips in its favor, and (4) an injunction is in the public interest.” *See Marlyn*
 14 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 877 (9th Cir. 2009) (quoting
 15 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). The Ninth Circuit evaluates these
 16 factors using a “sliding scale,” on which “a stronger showing of one element may offset a weaker
 17 showing of another,” such that the required showing of merit varies inversely with the showing of
 18 irreparable harm. *See hiQ Labs, Inc. v. LinkedIn Corp.*, 938 F.3d 985, 992 (9th Cir. 2019) (quoting
 19 *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)). In this regard, the
 20 Ninth Circuit has established that “where the ‘balance of hardships . . . tips sharply towards the
 21 plaintiff,’ a plaintiff need only show ‘serious questions going to the merits,’ rather than likelihood
 22 of success on the merits, to warrant preliminary injunctive relief.” *Roman v. Wolf*, 977 F.3d 935,
 23 941 (9th Cir. 2020) (quoting *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir.
 24 2011)).

25 As set forth in detail below, all four factors strongly favor issuance of a preliminary
 26 injunction to preserve the Soundgarden Parties’ pre-litigation right to exclusively access and
 27 control the administration of the Soundgarden Social Media Accounts, or at least prevent Plaintiffs
 28 from doing so.

1 **B. The Soundgarden Parties Are Likely To Succeed On The Merits Of Their**
 2 **Conversion Claim.**

3 The Soundgarden Parties are likely to succeed on the causes of action in their
 4 Counterclaims relating to the Soundgarden Social Media Accounts. For purposes of this Motion,
 5 the Soundgarden Parties focus on their “conversion” count – namely, their claim that Plaintiffs
 6 have willfully, and without legal justification, converted the Soundgarden Social Media Accounts
 7 by withholding from the Soundgarden Parties the requisite passwords to access and control one of
 8 Soundgarden’s crucial business assets—its social media accounts.² Under Washington law, a
 9 defendant is liable for the intentional tort of conversion where, “without lawful justification,” she
 10 “willfully interferes with, and thereby deprives another of, the other’s right to a chattel.”

11 *Davenport v. Washington Educ. Ass’n*, 147 Wash. App. 704, 721-22 (2008); *see also* Restatement
 12 (Second) of Torts § 222A (1965) (“Conversion is an intentional exercise of dominion or control
 13 over a chattel which so seriously interferes with the right of another to control it that the actor may
 14 justly be required to pay the other the full value of the chattel.”). A plaintiff claiming conversion
 15 must have “a possessory or other property interest in the [converted] chattel.” *Id.* (internal citations
 16 omitted).

17 **1. The Soundgarden Parties Are Likely To Establish That They Have A**
 18 **Possessory Interest In The Soundgarden Social Media Accounts.**

19 Under Washington law, corporate property and assets are considered “chattel” that may be
 20 converted. *Lang v. Hougan*, 136 Wash. App. 708, 718 (2007), as amended on denial of
 21 reconsideration (June 19, 2007) (“‘Chattel’ includes both tangible and intangible goods, such as
 22 corporate property.”) (internal citation omitted). In addition, Washington courts “have long
 23 recognized that a business’s customer base, or ‘goodwill,’ is a commodity on which one may place
 24 a monetary value.” *Id.* at 719 (internal citations omitted); *see also Yagi v. Cunningham*, No.
 25 56993-7-1, 2008 WL 353221, at *4 (Wash. Ct. App. Feb. 11, 2008) (“Intangible property subject

26
 27 ² Although Soundgarden has asserted multiple counterclaims against Plaintiffs, Soundgarden need only show that it is
 28 likely to succeed on one of its causes of action. *See Pratt v. Rowland*, 65 F.3d 802, 805 (9th Cir. 1995) (where
 preliminary injunction is warranted on one of plaintiff’s claims, court need not address the merits of plaintiff’s other
 causes of action).

1 to conversion specifically includes the goodwill value of a company.”) (citing *Lang*, 136 Wash.
 2 App. at 719).

3 The Soundgarden Social Media Accounts are a corporate asset that has been exclusively
 4 owned by Soundgarden since each account’s inception beginning in 2010. Like nearly every
 5 company, artist, and brand over at least the last decade, Soundgarden has developed and relied
 6 upon its social media accounts as an invaluable business asset. *See Thayil Decl.* ¶ 4. Over the
 7 years, Soundgarden has consistently dedicated significant funding and resources to the
 8 development of these accounts, including by paying its managers and third-party agents to
 9 professionally and skillfully run the accounts in a manner designed to benefit the Band’s brand
 10 and popularity. *See Thayil Decl.* ¶ 5. By way of example, Soundgarden pays The Creative
 11 Corporation, which built out the Soundgarden website in 2015, annual fees to maintain and
 12 administer its official website. *See Thayil Decl.* ¶ 3. Soundgarden also paid individuals or entities
 13 to directly maintain their social media accounts, oftentimes with Patriot or other current managers
 14 acting as intermediaries. And until Patriot’s termination in October 2019, a portion of the fees
 15 Soundgarden paid to Patriot for management services covered Patriot’s direct and indirect
 16 administration of the Soundgarden Social Media Accounts. *See Thayil Decl.* ¶ 6. Through this
 17 investment, the Soundgarden Social Media Accounts have become crucial business assets that
 18 have facilitated the Band’s ability to cultivate and sustain relationships with fans (much as “fan
 19 clubs” functioned previously), attract and inform wider audiences of their activity, and generate
 20 greater revenue through increased merchandise, recorded music, and concert ticket sales. *See*
 21 *Thayil Decl.* ¶ 7.

22 While the Soundgarden Parties have hired professionals to run their social media accounts
 23 (most recently as managed by Patriot), the professionals were always intermediaries that sought
 24 final approval and instructions from Soundgarden, and that understood Soundgarden maintained
 25 ownership rights to the accounts. *See Thayil Decl.* ¶ 5. The Soundgarden Parties have never ceded
 26 ownership rights to the accounts, nor granted anyone beyond their hired professionals permission
 27 to operate or post on the Soundgarden Social Media Accounts. *See Thayil Decl.* ¶ 9.

28

1 **2. The Soundgarden Parties Are Likely To Establish That Plaintiffs Continue
2 To Willfully Interfere With The Soundgarden Parties' Ownership Right
3 To Access And Control The Soundgarden Social Media Accounts.**

4 Plaintiffs, through Vicky Cornell, are willfully interfering with the Soundgarden Parties'
5 right to control their social media accounts by refusing to provide them with the login information
6 needed to access their accounts. The Soundgarden Parties first learned that Vicky Cornell claimed
7 to be involved in administration of the Soundgarden Social Media Accounts upon receiving a
8 March 20, 2020 e-mail from Vicky Cornell's attorney stating that: "Vicky has been running the
9 social media sites for years." *See Garcia Decl. Ex. A.* The Soundgarden Parties never gave Vicky
10 Cornell permission to control their social media accounts, and her ability to now do so stems from
11 Patriot providing Vicky Cornell with access to these accounts whereon she changed the passwords
12 and refused to share them with Patriot. As noted, these facts are confirmed by emails produced in
13 this action which state that, as of early December 2019, "Vicky [Cornell] has since changed all the
14 social media passwords for the band accounts and will not share them with" Patriot. *See Garcia*
15 Decl. Ex. A.

16 Starting early in this action, Soundgarden repeatedly requested that Plaintiffs deliver to
17 Soundgarden its accounts' log-in information and other access rights, and otherwise relinquish
18 control over those accounts. *See Garcia Decl. ¶ 6.* Plaintiffs refused to do so, and ultimately
19 formally disputed that Soundgarden owned the accounts or the corresponding login information.
20 *See Garcia Decl. Ex. C at 20-22 (Plaintiffs' Responses to Special Interrogatory Nos. 15-16).* This
21 refusal (along with Vicky Cornell's reported statement that she wanted "the band" to "sue her for"
22 the Soundgarden Social Media Accounts), is *prima facie* evidence that Plaintiffs' interference is
23 willful, and that they are liable for conversion. *See Restatement (Second) of Torts § 237 (1965)*
24 ("One in possession of a chattel as bailee or otherwise who, on demand, refuses without proper
25 qualification to surrender it to another entitled to its immediate possession, is subject to liability
26 for its conversion.").

27 Not only is Vicky Cornell refusing to return this critical information to the Soundgarden
28 Parties, she is also actively posting to, removing content from, and otherwise controlling the
Soundgarden Social Media Accounts. Without the Soundgarden Parties' permission, Vicky

THE SOUNDGARDEN PARTIES' MOTION

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1 Cornell, wrongly identifying herself as “Soundgarden,” has removed fan comments and has
 2 herself posted images and comments to publicly-accessible Soundgarden Social Media Accounts.
 3 Some of those postings by Vicky Cornell are intended to denigrate or mock the Soundgarden
 4 Parties. For example, in late-March of 2020, Vicky Cornell posted as “Soundgarden” on
 5 Soundgarden’s official Instagram page at Instagram.com/p/B- bBXofJIRO/ a photo of Cameron,
 6 Soundgarden’s drummer, with the capitalized words “FEEL THE RHYTHM WITH YOUR
 7 HANDS STEAL THE RHYTHM WHILE YOU CAN” printed over the photo. *See Garcia Decl.* ¶
 8 9, Ex. N. These words are lyrics taken from the 1994 Soundgarden hit recording entitled,
 9 “Spoonman.” *See id.* Vicky Cornell’s post, which she wanted Soundgarden fans to believe had
 10 been posted by Soundgarden, was intended to convey that Soundgarden’s rhythm player was
 11 “stealing” from Vicky Cornell. *See Garcia Decl.* ¶ 10. As noted in Section III, *supra*, many fans
 12 got the message and they did not like it. *See id.*

13 Other postings by Plaintiffs intentionally draw viewers away from the Soundgarden Social
 14 Media Accounts or distract from Soundgarden’s work. For example, on multiple occasions, Vicky
 15 Cornell has used the Soundgarden Instagram to promote artists completely unrelated to
 16 Soundgarden. *See Garcia Decl.* Ex. J. In large part, Vicky Cornell uses the Soundgarden Social
 17 Media Accounts to promote her late husband, Mr. Cornell, and his solo artist career. From roughly
 18 July 2020 to March 2021, over 80 percent of Soundgarden’s social media posts referenced or were
 19 about Mr. Cornell. *See id.* While Vicky Cornell uses the Soundgarden Social Media Accounts to
 20 post individual tributes to Mr. Cornell or to repost content from Mr. Cornell’s separate accounts,
 21 there has not been a single reference to any of the Surviving Band Defendants for at least 33
 22 weeks. *See id.* Vicky Cornell has included in the Soundgarden Facebook headline a promotion for
 23 “The ‘Chris Cornell’ Career Retrospective.” *See Garcia Decl.* Ex. G. She has similarly edited the
 24 “bio” section of the Soundgarden Instagram so that it only says “#noonesingslikeyouanymore,”
 25 which is the title of Mr. Cornell’s recently posthumously released solo album and a hashtag
 26 dedicated solely to Mr. Cornell. *See Garcia Decl.* Ex. L.

27 After Vicky Cornell took control of the Soundgarden Social Media Accounts, members of
 28 the public took notice and began voicing frustration about Vicky Cornell’s obvious take-over. *See*

1 Garcia Decl. Ex. J (Raine Arimitsu: “At the risk of sounding redundant, why is VK in control of
 2 Soundgarden’s social media?”); *id.* (Mary Lupo: “Set their page free!!!”). One Twitter user,
 3 *dextweets* asked, “Who’s running the SG accounts and WTF is happening w our beloved band?
 4 MC has writing credits on so many songs. The band is equal parts—no one holds weight above the
 5 others...which is what made them so great.” *See* Garcia Decl. Ex. J. An Instagram user, *ericomonk*
 6 demanded, “GIVE THIS PAGE BACK TO THE REAL OWNERS, THE BAND!” *See id.*
 7 Followers of the Soundgarden Social Media Accounts became so vocally irritated with Vicky
 8 Cornell’s ill-focused control of the accounts that Vicky Cornell began deleting account followers’
 9 comments. *See id.* (*mksmnn*: “Vicky sure is busy turning off comments.”); *id.* (*pandacorn80*:
 10 “Deleting comments eh? . . . This all not going quite how you anticipated?”). Disgruntled fans’
 11 negative comments about Vicky Cornell became so overwhelming that she eventually deactivated
 12 *all* followers’ abilities to comment on Soundgarden’s pages. *See id.* (“Comments on this post have
 13 been limited.”); *see also id.* Ex. L. This turning off the comments feature on the Soundgarden
 14 Instagram account thereby making it impossible for any fan or visitor to leave any feedback to the
 15 posts she chooses to make is another of Vicky Cornell’s tools for controlling the narrative on
 16 Soundgarden’s social media accounts. The Soundgarden Instagram comments feature is currently
 17 turned off. *See Garcia Decl. Ex. L.*

18 When Vicky Cornell is not using the Soundgarden Social Media Accounts to promote
 19 artists other than Soundgarden or to silence Soundgarden fans, she has otherwise neglected or
 20 totally abandoned the accounts. There has been no news item added to the Band’s official website
 21 since October 15, 2019 (*see Garcia Decl. Ex. E*), no new post on the Band’s Twitter account since
 22 January 28, 2020 (*see Garcia Decl. Ex. F*), no new post on the Soundgarden Facebook account
 23 since February 23, 2020 (except for one post on March 3, 2021, containing the hashtag
 24 “noonesingslikeyouanymore” which was promoting the recently posthumously released solo
 25 album from Mr. Cornell) (*see Garcia Decl. Ex. G*), and the Band’s Tumbler account has no
 26 content on it (*see Garcia Decl. Ex. M*). The headline on the Band’s Facebook landing page is a
 27 plug for the Chris Cornell retrospective album. *See Garcia Decl. Ex. G.* The Band’s Facebook
 28 “Official Store” page is not operational. *See Garcia Decl. Ex. H.* The “About” page on the Band’s

1 YouTube channel contains the following: “Description: The ‘Chris Cornell’ Career Retrospective,
 2 featuring ‘When Bad Does Good,’ is available now at www.chriscornell.com.” *See* Garcia Decl.
 3 Ex. I. The Soundgarden Parties, of course, are willing and eager to cross-promote solo projects
 4 relating to Mr. Cornell on the Soundgarden Social Media Accounts, but must also be able to
 5 promote news and materials relating to Soundgarden. *See* Thayil Decl. ¶ 11.

6 In sum, Plaintiffs are not only withholding the Soundgarden Parties’ property, but Vicky
 7 Cornell is actively using (or not using, as the case may be) that property to sabotage
 8 Soundgarden’s best interests.

9

10 **3. The Soundgarden Parties Are Likely To Establish That Plaintiffs Have No
 11 Lawful Justification For Their Interference With The Soundgarden
 12 Parties’ Ownership Interest In The Soundgarden Social Media Accounts.**

13 Plaintiffs assert that they are justified in withholding the log-in information for the
 14 Soundgarden Social Media Accounts because Vicky Cornell allegedly “personally devoted her
 15 own time and effort in establishing, creating and maintaining” these accounts and facilitated the
 16 accounts’ growth by “‘drafting off’ of Mr. Cornell’s then-existing, separately-created popular,
 17 official accounts, which Ms. Cornell oversaw.” *See* Garcia Decl. Ex. D at 5-6 (Response to Special
 18 Interrogatory No. 22). Even if true, which is far from proven, this assertion provides no legal or
 19 factual justification for Plaintiffs’ interference with the Soundgarden Parties’ control over their
 20 social media accounts.

21 As a factual matter, Vicky Cornell is not a member of the Soundgarden Partnership, so she
 22 has no ownership rights to Soundgarden business assets, including its social media accounts, in
 23 this capacity.³ In addition, at no time did the Soundgarden Parties hire or give permission to Vicky
 24 Cornell to operate or post on their social media accounts. The Soundgarden Parties hired Patriot,
 25 for whom Vicky Cornell did not work, to provide management services, including managing
 26 Soundgarden’s social media presence. *See* Garcia Decl. ¶ 3. Patriot provided these services until

27 ³ The only interest Plaintiffs have in the Soundgarden Partnership is Mr. Cornell’s dissociated interest, which Ms.
 28 Cornell inherited upon her late husband’s death and which is now the subject of the buyout valuation action that is the
 subject of a separate suit recently filed by Plaintiffs. *See* Vicky Cornell v. Soundgarden et al, Case #
 2:21-cv-00192-RSL-MLP (the “Buyout Action”).

1 they were terminated by Soundgarden in October 2019. *See id.* The Soundgarden Parties were not
 2 aware that Vicky Cornell even claimed any role regarding the Soundgarden Social Media
 3 Accounts until March 20, 2020, when Vicky Cornell's counsel incorrectly wrote: "Vicky has been
 4 running the social media sites for years." *See Garcia Decl.* ¶ 5, Ex. 2.⁴

5 Plaintiffs' interrogatory responses indicate that Vicky Cornell's real motivation for
 6 refusing to deliver Soundgarden's requested log-in information is that, once she does so, she will
 7 no longer be able to control fan commentary on Soundgarden's social media accounts, which has
 8 been overwhelmingly critical of Vicky Cornell. *See Garcia Decl.* Ex. C at 20 (Response to Special
 9 Interrogatory No. 15) (suggesting that relinquishing control of the Soundgarden Social Media
 10 Accounts would allow users to "defame Vicky Cornell" and "provoke online trolls."). The
 11 Soundgarden Parties have no interest in permitting defamation of Vicky Cornell and would never
 12 purposely "provoke online trolls." *See Thayil Decl.* ¶ 10.

13 **C. If the Soundgarden Parties' Motion For Preliminary Injunction Is Denied,
 14 They Will Likely Suffer Irreparable Harm.**

15 The Soundgarden Parties will suffer irreparable harm if Plaintiffs are permitted to continue
 16 controlling the Soundgarden Social Media Accounts. To establish the necessity of preliminary
 17 relief, the Soundgarden Parties need only "demonstrate that irreparable injury is *likely* in the
 18 absence of an injunction." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)
 19 (emphasis in original). Here, if Vicky Cornell does not stop controlling the Soundgarden Social
 20 Media Accounts and if the Soundgarden Parties are denied access to those accounts, they will
 21 suffer irreparable harm in the form of lost prospective audiences and sales, stunted advertising
 22 efforts, and decreased fan goodwill, all of which threaten Soundgarden's business. This harm is
 23 not merely speculative, as Soundgarden has already experienced reputational harm and loss of
 24 income. For example, fans have been dissuaded from purchasing merchandise on the Soundgarden

25 ⁴ Legally, even if the Soundgarden Parties had been aware of Vicky Cornell's alleged involvement in the
 26 administration of the Soundgarden Social Media Accounts, or had even hired her to provide social media-related
 27 services, this would not operate to transfer legal ownership of those accounts to Vicky Cornell. *See Restatement*
 28 (*Third*) of Agency § 8.05 (2006) ("An agent has a duty (1) not to use property of the principal for the agent's own
 purposes or those of a third party . . ."); *In re Est. of Haviland*, 162 Wash. App. 548, 565 (2011) ("The fiduciary duty
 of loyalty prohibits the use of the principal's property for the benefit of the trustee") (citing Restatement); Wash. Rev.
 Code Ann. § 49.44.200(3) (employers maintain ownership of social media accounts run by employees/agents).

1 official website due to doubts about the recipient of the associated revenue. *See Garcia Decl.* ¶ 11.
 2 In addition, Twitter recently removed Soundgarden’s status as a “verified” account, i.e., an
 3 “authentic presence of a notable public figure, celebrity or global brand,” a status it had held since
 4 at least 2014. *See Garcia Decl.* ¶ 17, Ex. F.

5 Like nearly every company, artist, and brand over at least the last decade, Soundgarden has
 6 relied heavily upon its online presence to attract new fans, connect with long-time fans, sell its
 7 music and merchandise, and generally promote its artistry, reputation, and global reach—all of
 8 which require the ability to continuously control and update its social media accounts and respond
 9 to fan commentary in real time. *See Thayil Decl.* ¶ 4. The inability to do so unquestionably harms
 10 the Soundgarden Parties’ reputation, marketability, fanbase, and competitive edge within the
 11 music industry, as there is no viable alternative to generate the social capital and marketing that
 12 social media provides. This “threat of being driven out of business,” the degree of which is
 13 unquantifiable in monetary terms, constitutes irreparable harm. *hiQ Labs, Inc. v. LinkedIn Corp.*,
 14 938 F.3d 985, 993 (9th Cir. 2019) (internal citations omitted). Indeed, the Ninth Circuit has
 15 explicitly held that “loss of . . . an ongoing business representing many years of effort and the
 16 livelihood of its . . . owners, constitutes irreparable harm. What plaintiff stands to lose cannot be
 17 fully compensated by subsequent monetary damages.” *hiQ Labs, Inc. v. LinkedIn Corp.*, 938 F.3d
 18 985, 993 (9th Cir. 2019) (quoting *Roso-Lino Beverage Distributors, Inc. v. Coca-Cola Bottling*
 19 *Co. of New York, Inc.*, 749 F.2d 124, 125–26 (2d Cir. 1984) (per curiam)). In other words,
 20 “showing a threat of extinction is enough to establish irreparable harm, even when damages may
 21 be available and the amount of direct financial harm is ascertainable.” *hiQ Labs, Inc. v. LinkedIn*
 22 *Corp.*, 938 F.3d 985, 993 (9th Cir. 2019) (internal citations omitted).

23 Even without a threat to Soundgarden’s continued viability, the damage to Soundgarden’s
 24 reputation and visibility alone caused by the neglect or mismanagement of its social media
 25 accounts constitutes irreparable harm. *See Regents of Univ. of California v. Am. Broad.*
 26 *Companies, Inc.*, 747 F.2d 511, 520 (9th Cir. 1984) (district court did not abuse its discretion in
 27 finding irreparable harm where plaintiff football teams presented ample evidence of “palpable
 28 diminution in national reputation and following from their inability to telecast their premier

1 contests”). For example, in addressing a company’s motion to enjoin a former employee from
 2 posing both on and offline as the company and its affiliates, and from using the company’s domain
 3 name, a court in this Circuit found that, without an injunction against the employee, the company
 4 would suffer irreparable injury to its “character and reputation.” *Oakley, Inc. v. McWilliams*, 890
 5 F. Supp. 2d 1240, 1242 (C.D. Cal. 2012). Here, too, Soundgarden’s “character and reputation”
 6 have suffered in light of Plaintiffs’ control over their social media accounts (*see, e.g.*, Garcia Decl.
 7 ¶ 11, Ex. F), and they will continue to suffer absent the requested injunction. Soundgarden’s
 8 ability to remain relevant and profitable depends on their fans’ continued support and following,
 9 which they will steadily lose without the ability to present their true character and values via their
 10 official social media—the only platform reliably facilitating direct communication between artists
 11 and their fans.

12 Similarly, without the ability to control its social media presence, Soundgarden may have
 13 trouble attracting new fans (especially younger fans) and its advertising efforts will be hampered.
 14 This “threatened loss of prospective customers or goodwill certainly supports a finding of the
 15 possibility of irreparable harm.” *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832,
 16 841 (9th Cir. 2001); *see also Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental, Inc.*, 944
 17 F.2d 597, 603 (9th Cir. 1991) (harm to moving party’s advertising efforts and goodwill due to
 18 breach of covenant not to compete qualified as irreparable); *Benda v. Grand Lodge of Int'l Ass'n*
 19 *of Machinists & Aerospace Workers*, 584 F.2d 308, 315 (9th Cir. 1978) (threat that union district
 20 local would lose members, and that its “financial life” was threatened, constituted “substantial and
 21 irreparable” harm). Not only has Soundgarden lost fans through its inability to engage with them
 22 via social media on a consistent, timely, and authentic basis, but Plaintiffs have capitalized on
 23 their wrongful control of the social media accounts to direct fans *away* from Soundgarden. *See,*
 24 *supra* at Section _.

25 **D. The Balance Of Hardships Favors Granting The Soundgarden Parties’**
 26 **Motion.**

27 The irreparable, and potentially permanent, harm the Soundgarden Parties will suffer if
 28 their Motion is denied greatly outweighs any potential harm Plaintiffs might suffer if control of the

1 Soundgarden Social Media Accounts is returned to the Soundgarden Parties (or, in the alternative,
 2 frozen pending adjudication of relevant claims). As discussed above, denial of this Motion would
 3 likely lead to a decrease in Soundgarden’s fanbase and relevance and may threaten its ability to
 4 remain a viable business. In contrast, Plaintiffs, like the former employee in *Oakley, Inc. v.*
 5 *McWilliams* (*see supra* at Section IV.C), would suffer no hardship if forced “to refrain from
 6 contacting or posing as [Soundgarden] or their associates.” *Oakley, Inc.*, 890 F. Supp. At 1242.
 7 Plaintiffs have no ongoing stake in Soundgarden and thus have no interest whatsoever in the
 8 performance of the Soundgarden Social Media Accounts, as any financial interest Plaintiffs have
 9 in Soundgarden is the subject of the Buyout Action. Recognizing this, the positions set forth in
 10 Plaintiffs’ interrogatory responses do not justify their interference with the Soundgarden Social
 11 Media Accounts by claiming any financial or artistic stake in their administration. Rather, Vicky
 12 Cornell wants to maintain control of the accounts because if she loses it, she will lose her ability to
 13 stifle the unflattering comments about her that some members of the public may post online. *See*
 14 Garcia Decl. Ex. C at 20 (Response to Special Interrogatory No. 15) (suggesting that relinquishing
 15 control of the Soundgarden Social Media Accounts would “incite stalkers” and “provoke online
 16 trolls”).

17 To the extent Plaintiffs have an interest in the Soundgarden Social Media Accounts
 18 because Vicky Cornell wants to ensure Soundgarden maintains a positive image of its former
 19 member and her late husband, Mr. Cornell, Soundgarden shares this interest, and therefore, there
 20 is no threat that Soundgarden would use its social media to denigrate Mr. Cornell. *See* Thayil
 21 Decl. ¶ 12. Moreover, Mr. Cornell, as an individual artist, has his own social media accounts,
 22 which Vicky Cornell manages. Vicky Cornell, as Mr. Cornell’s heir, may have an ownership
 23 interest in those accounts, but she has none in the Soundgarden Social Media Accounts and will
 24 not suffer any hardship from not being able to control them pending resolution of relevant claims
 25 in this action .

26 //

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28 //

E. The Issuance Of The Soundgarden Parties' Requested Preliminary Injunction Is In The Public Interest.

Finally, it is in the public interest that this Court grant the Soundgarden Parties' requested injunctive relief. *Bernhardt v. Los Angeles Cty.*, 339 F.3d 920, 931–32 (9th Cir. 2003) (internal citations omitted). Now, more than ever, the public relies on social media platforms to stay informed, connect with, make purchases from, and follow its preferred brands and artists. For better or worse, social media is often the public's only source of news, connection, and culture. As such, it is important that the public can confidently assume that the social media platforms they follow are controlled by their true owners. By granting the Soundgarden Parties' requested injunctive relief, this Court can—at least until the final merits of the Soundgarden Parties' related claims are adjudicated—mitigate consumer confusion and deception, and simultaneously provide businesses the confidence to create robust and effective social media platforms without fear of losing their investment to wrongful ownership claims.

CONCLUSION

15 For the foregoing reasons, the Soundgarden Parties respectfully request that this Court
16 grant their motion for preliminary injunction.

17 || Date: March 25, 2021

Respectfully submitted,

By: s/ Paul H. Beattie

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Attorneys for the Soundgarden Parties

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the
3 CM/ECF system, which will send electronic notification of such filing to all CM/ECF participants.
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6 Date: March 25, 2021

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8 *s/ Gabriel G. Gregg*

9 Gabriel G. Gregg, Pro Hac Vice Admitted

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